CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

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Concerning Customs and Related Matters of the

U.S. Customs Service

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and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

General Notices

ANNOUNCEMENT OF A PUBLIC BRIEFING CONCERNING THE EXPANSION OF THE INTERNATIONAL TRADE PROTOTYPE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces that Customs will hold a public briefing for interested parties concerning the expansion of the International Trade Prototype. The meeting will focus on providing details concerning the functionality of the next phase, soliciting participation, and allowing the public to provide comments. Seating is limited and will be extended to the first 100 callers.

DATES: The public briefing will take place on Thursday, April 29, 1999, beginning at 1:00 p.m. Requests to attend this briefing must be received by Pamela McGuyer at (202) 927–0279 on or before Monday, April 26, 1999.

ADDRESSES: The public briefing will take place in the Edward R. Murrow Conference Room located on the 13th Floor of the National Press Club located at 529 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For prototype or participation questions please contact Daniel Buchanan, of the U.S. Customs Service at (617) 565–6236, or Linda LeBaron Grasley, of the U.S. Customs Service at (716) 626–0400 x 204.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 3, 1998, Customs published a document in the Federal Register (63 FR 30288) announcing what is expected to be a series of prototypes collectively called the International Trade Prototype (ITP). This notice invited public comments concerning any aspect of the planned prototype, informed interested members of the public of the eligibility requirements for voluntary participation in the first phase of the first prototype called the International Trade Prototype 1 (ITP1) and outlined the development and evaluation methodology to be used in the

test. It was announced that in order to participate in ITP1, the necessary information, as outlined in that notice, must be filed with Customs and approval granted.

Today's document announces that Customs will proceed to the next phase of the International Trade Prototype commencing in late June 1999 and will hold a public briefing for the purpose of providing details concerning the functionality of the next phase, soliciting participation, and allowing the public to provide comments.

For interested parties that are unable to attend the public briefing on April 29, 1999, a subsequent notice will be published in the Federal Register providing the details and requirements for participation in the next phase of the International Trade Prototype.

Dated: April 15, 1999.

CHARLES W. WINWOOD,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, April 21, 1999 (64 FR 19583)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 21, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PARTS FOR AIRCRAFT ENGINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letters and treatment relating to classification of parts for aircraft engines.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify three rulings relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of air seals, compressor modules, compressor stator assemblies, and rotor and stator assemblies, all of which are integral components of commercial jet aircraft engines. Similarly, Customs intends to modify any treatment it previously accorded to substantially identical transactions. Customs invites comments on the correctness of the proposed modifications.

DATE: Comments must be received on or before June 4, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify three rulings relating to the tariff classification of parts for jet aircraft engines. Although in this notice Customs is specifically referring to three rulings, *NY* C87045, dated April 29, 1998, *NY* C88225, dated May 28, 1998, and *NY* C88226, dated June 1, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones cited, but no further rulings have been identified. This notice will cover any rulings on this merchandise which may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified

in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *NY* C87045, dated April 29, 1998, the Director of Customs National Commodity Specialist Division, New York, held that a low-pressure compressor module rotor and stator assembly, part 50B500, two low-pressure compressor stator assemblies, parts 50B271 and 56B016–01, and a rotor and stator assembly—LPC module, part 798714, all of which were described as components of commercial jet aircraft engines, were classifiable in subheading 8411.91.1060, HTSUS, as other cast-iron parts of turbojets and turbopropellers for use in civil aircraft. In *NY* C88225, dated May 28, 1998, a high-pressure compressor module rotor and stator assembly, part 56H277, a high-pressure compressor stator set, part 54H891–01, two high-pressure compressor sets, parts 56H489–01 and 54H898–01, and a rotor and stator assembly—HPC module, part 824715, all were classified in the same provision. Finally, in *NY* C88226, dated June 1, 1998, a high-pressure compressor air seal, part 50H021, a diffuser air seal, part 54H846, two high-pressure turbine air seals, parts 50L195 and 50L659, and two low-pressure turbine air seals, parts 50N412 and 50N007, were similarly classified.

These three rulings were based on Customs inadvertent characterization of the parts in issue as being made of cast-iron. *NY* C87045, *NY* C88225, and *NY* C88226 are set forth as Attachments A, B, and C, to this document, respectively.

Upon further review of the facts, the merchandise in each ruling has been determined to be of titanium construction, but is otherwise correctly described. As such, pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify *NY* C87045, *NY* C88225 and *NY* C88226, and any other rulings not specifically identified, to reflect the proper classification of the merchandise in subheading 8411.91.9080, HTSUS, as indicated in *HQ* 962104. This ruling is set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: April 13, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, April 29, 1998.

CLA–2–88:RR:NC:MM:106 C87045
Category: Classification
Tariff No. 8411.91.1060

MR. PAUL ROBERT
PRATT & WHITNEY
400 Main Street
East Hartford, CT 06108

Re: The tariff classification of jet aircraft engine compressor modules and subassemblies.

DEAR ROBERT:

In your letter dated April 20, 1998 you requested a tariff classification ruling. You included drawings and literature with your request.

The items in question are part number 50B500, a Low-Pressure Compressor Module (LPC) Rotor and Stator Assembly; part number 50B271, a LPC Compressor Stator Assembly; part number 56B016–01, a LPC Compressor Stator Assembly; and part number 798714, Rotor and Stator Assembly—LPC Module. All of these parts are components of commercial jet aircraft engines.

Part number 50B500 is the Low-Pressure Compressor section of the PW4000 aircraft gas turbine engine. The LPC consists of multiple titanium hubs (circular solid titanium disks) into which airfoils (rotating titanium blades and static titanium vanes) are mechanically attached. The purpose of this assembly is to direct air into the intake of the engine, compress it and increase the pressure of the air, which is then channeled into succeeding hubs and airfoils for further compression and for further compression and for eventual creation of thrust. Part number 50B500 is the top-level assembly of multiple rotor and stator hubs and airfoils.

Part number 50B271 consists of a subassembly of the PLC described above. This part is a single hub and stationary stators that is assembled in union with other additional rotating and stationary hubs and airfoils into a finished LPC.

Part number 50B016–01 is a subassembly of part number 50B271 and consists of an assembly of one titanium hub and multiple stators.

All three of the 50B parts are used on the PW4000 jet aircraft engine.

Part number 798714 is the LPC used in the JT9D-series jet aircraft engine. This assembly serves the same purpose on this model engine as part number 50B500 serves on its model.

The applicable subheading for the jet aircraft engine compressor modules and subassemblies described above will be 8411.91.1060, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of aircraft turbines for use in civil aircraft.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick J. Wholey at 212–466–5668.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 28, 1998.

CLA–2–84:RR:NC:MM:106 C88225
Category: Classification
Tariff No. 8411.91.1060

MR. PAUL L. ROBERT
PRATT & WHITNEY
400 Main Street
East Hartford, CT 06108

Re: The tariff classification of jet aircraft engine high-pressure compressor modules and subassemblies.

DEAR MR. ROBERT:

In your letter dated April 20, 1998 you requested a tariff classification ruling. You included drawings and literature with your request.

The items in question are part number 56H277, a High-Pressure Compressor Module (HPC) Rotor and Stator Assembly; part number 54H891–01, a HPC Compressor Stator Set; part number 56H489–01, a HPC Compressor Set; part number 54H898–01, a HPC Compressor Set; and part number 824715, Rotor and Stator Assembly—HPC Module. All of these parts are components of commercial jet aircraft engines.

Part number 56H277 is the High-Pressure Compressor section of the PW4000 aircraft gas turbine engine. The HPC consists of multiple titanium hubs (circular solid titanium disks) into which airfoils (rotating titanium blades and static titanium vanes) are mechanically attached. The purpose of this assembly is to direct air into the intake of the engine, compress it and increase the pressure of the air, which is then channeled into succeeding hubs and airfoils for further compression and for mixture with fuel, combustion and eventual creation of thrust. Part number 56H277 is the top-level assembly of multiple rotor and stator hubs and airfoils.

Part numbers 54H891–01, 56H489–01, and 54H898–01 consist of subassemblies of the HPC described above. These parts represent a single hub and stationary stators assembled in union with other additional rotating and stationary hubs and airfoils into a finished HPC.

All of the above parts are used on the PW4000 jet aircraft engine.

Part number 824715 is the HPC used in the JT9D-series jet aircraft engine. This assembly serves the same purpose as part number 56H277 serves on its model.

The applicable subheading for the jet aircraft engine high-pressure compressor modules and subassemblies will be 8411.91.1060, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of aircraft turbines for use in civil aircraft.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick J. Wholey at 212–466–5668.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 1, 1998.

CLA–2–84:RR:NC:MM:106 C88226
Category: Classification
Tariff No. 8411.91.1060

MR. PAUL L. ROBERT
PRATT & WHITNEY
400 Main Street
East Hartford, CT 06108

Re: The tariff classification of jet aircraft engine airseals.

DEAR MR. ROBERT:

In your letter dated April 20, 1998 you requested a tariff classification ruling. You included drawings and literature with your request.

The items in question are part number 50H021, a High-Pressure Compressor (HPC) Airseal; part number 54H846, a Diffuser Airseal; part number 50L195, a High-Pressure Turbine (HPT) Airseal; part number 50L659, a High-Pressure Turbine (HPT) Airseal; part number 50N412, a Low-Pressure Turbine (LPT) Airseal; and part number 50N007, a Low-Pressure Turbine (LPT) Airseal. All of these parts are components of commercial jet aircraft engines.

Part number 50H021 is an airseal used in the high-pressure compressor (HPC) of the PW4000 aircraft gas turbine engine. The airseal consists of a round metal titanium flange, varying in diameter from 54 to 56 inches, depending on the engine model. The purpose of the airseal is to block the passage of air being drawn into the engine so that air is directed into the HPC rather than passing through cracks or seams in the HPC module's piece parts and subassemblies, thus preventing a potential thrust loss and reduced efficiency for the engine.

Part number 54H846 is an airseal used in the diffuser assembly of the PW4000 engine. Located at the rear of the HPC, the titanium airseal fits over the rotating shaft and ensures that compressed air does not leak around the shaft or the titanium case housing the HPC. This airseal serves the same purpose as part number 50H021.

Part numbers 50L195 and 50L659 are High-Pressure Turbine (HPT) Airseals for the PW4000 aircraft gas turbine engine. The HPT consists of multiple titanium hubs and airfoils that accept compressed, superheated air from the combustion sections of the engine and further compress and accelerate the air to cause thrust. The purpose of the titanium airseals are to minimize air leakage or loss and to ensure that compressed air remains in the gas path and is not lost between the rotating HPT module and its titanium case.

Part numbers 50N412 and 50N007 are Low-Pressure Turbine (LPT) Airseals used in the PW4000 engine series. These titanium airseals serve the same purpose as the part numbers mentioned above, ensuring no loss of compression in the LPT assembly within the engine.

The applicable subheading for the jet aircraft engine airseals will be 8411.91.1060, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of aircraft turbines for use in civil aircraft.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick J. Wholey at 212–466–5668.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962104 JAS
Category: Classification
Tariff No. 8411.91.9080

MR. PAUL L. ROBERT
PRATT & WHITNEY
400 Main Street
East Hartford, CT 06108

Re: Rotor and Stator Assemblies, Compressor Stator Sets, High-Pressure and Low-Pressure Turbine Air Seals; Parts of Aircraft Turbines; *NY* C87045, *NY* C88225, *NY* C88226 Modified.

DEAR MR. ROBERT:

This is in reference to three rulings previously issued to Pratt & Whitney concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of various parts and components for the PW4000 jet aircraft engine.

In *NY* C87045, dated April 29, 1998, the Director of Customs National Commodity Specialist Division, New York, held that a low-pressure compressor module rotor and stator assembly, part 50B500, two low-pressure compressor stator assemblies, parts 50B271 and 56B016–01, and a rotor and stator assembly—LPC module, part 798714, all of which were described as components of commercial jet aircraft engines, were classifiable in subheading 8411.91.1060, HTSUS, as other cast-iron parts of turbojets and turbopropellers for use in civil aircraft. In *NY* C88225, dated May 28, 1998, a high-pressure compressor module rotor and stator assembly, part 56H277, a high-pressure compressor stator set, part 54H891–01, two high-pressure compressor sets, parts 56H489–01 and 54H898–01, and a rotor and stator assembly—HPC module, part 824715, all were classified in the same provision. Finally, in *NY* C88226, dated June 1, 1998, a high-pressure compressor air seal, part 50H021, a diffuser air seal, part 54H846, two high-pressure turbine air seals, parts 50L195 and 50L659, and two low-pressure turbine air seals, parts 50N412 and 50N007, were similarly classified.

The classifications expressed in these rulings were based on Customs inadvertent reference to the parts as being of cast-iron construction. In fact, they are of titanium construction. The description of these articles in each of the three rulings and their characterization as components of commercial jet aircraft engines is otherwise correct.

The components of the PW4000 jet aircraft engine, the subject of *NY* C87045, dated April 29, 1998, *NY* C88225, dated May 28, 1998, and *NY* C88226, dated June 1, 1998, are provided for in heading 8411, HTSUS, as turbojets, turbopropellers and other gas turbines, and parts thereof. They are classifiable in subheading 8411.91.9080, HTSUS, as other parts of aircraft turbines. The general column 1 rate of duty is free.

NY C87045, *NY* C99225, and *NY* 88226 are modified accordingly.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SEAT BELT ADJUSTER ASSEMBLY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to seat belt adjuster assembly.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of seat belt adjuster assemblies, and any treatment Customs has previously accorded to substantially identical transactions. Seat belt adjuster assemblies consist of a metal track and adjuster catch that slides in the track. These articles permit the manual adjustment of automotive seat belts. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before June 4, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the

importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of seat belt adjuster assemblies. Although in this notice Customs is specifically referring to one ruling, *NY* 809031, dated April 20, 1995, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to *NY* 809031, but no further rulings have been identified. This notice will cover any rulings on this merchandise which may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *NY* 809031, dated April 20, 1995, adjuster assemblies for automotive seat belts were held to be classifiable in subheading 8708.99.8080, HTSUS, as other parts and accessories of motor vehicles. In this ruling, Customs inadvertently overlooked the fact that this assembly is more specifically provided for as a part or accessory of an automotive body. *NY* 809031 is set forth as "Attachment A" to this document.

It is now Customs position that these seat belt adjuster assemblies are classifiable in subheading 8708.29.5060, HTSUS, as other parts and accessories of bodies. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke *NY* 809031, and any other ruling not specifically identified, to reflect the proper classification of the merchandise as reflected in *HQ* 961369, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transac-

tions. Before taking this action, we will give consideration to any written comments timely received.

Dated: April 15, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, April 20, 1995.

CLA-2-87:S:N:N1:809031 101
Category: Classification
Tariff No. ***8708.99.8080*** (EN)

RAUL CAMPOS
TRW SAFETY SYSTEMS HOLDING CO.
3801 Ursula
McAllen, TX 78503

Re: The tariff classification of an Adjuster Assembly for an Auto Safety Seat Belt from Mexico.

DEAR MR. CAMPOS:

In your letter dated March 31,1995 you requested a tariff classification ruling.

The item concerned is an Adjuster Assembly for an Auto Safety Seat Belt. It consists of a metal sliding track with a screw on either end which measures 8 1/8"L X 1 1/8"W X 1 1/8"H (including screws) and a hard plastic "adjuster" apparatus with metal screw and operable "catch" which is fitted into and slides on the metal sliding track; this "adjuster" apparatus and screw measure 2 3/4"L X 1"W X 2"H.

The applicable subheading for the Adjuster Assembly will be ***8708.99.8080*** (EN), Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other. The rate of duty will be 3% ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 961369 JAS
Category: Classification
Tariff No. 8708.29.5060

RAUL CAMPOS
TRW SAFETY SYSTEMS HOLDING CO.
3801 Ursula
McAllen, TX 78503

Re: *NY* 809031 Revoked; Adjuster Assembly for Automotive Seat Belt.

DEAR MR. CAMPOS:

In your letter of February 3, 1998, you ask that we revoke a ruling to you on the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of adjuster assemblies for automobile seat belts.

Facts:

In *NY* 809031, which the then-Area Director of Customs, New York Seaport, issued to you on April 20, 1995, adjuster assemblies for automobile seat belts were held to be classifiable in subheading 8708.99.8080, HTSUS, as other parts and accessories for motor vehicles of headings 8701 to 8705. These articles consist of a metal sliding track with screws on either end and a hard plastic adjuster apparatus with metal screw and catch, which is fitted into and slides on the metal sliding track. A passenger or driver may adjust his seat belt by manually operating the adjuster catch. While not stated in the text of *NY* 809031, the adjuster assembly is mounted by two screws to the vehicle's B pillar. You maintain the adjuster assembly is more narrowly and specifically provided for in heading 8708 as a part or accessory of a motor vehicle body.

The provisions under consideration are as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
8708.99	Other:
8708.99.80	Other

Issue:

Whether the seat belt adjuster assembly is provided for in heading 8708 as parts and accessories of bodies.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 3(a) states in part that where goods are, *prima facie*, classifiable in two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. GRI 6 states in part that the classification of goods in the subheadings of a heading shall be according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to Rules 1 through 5, on the understanding that only subheadings at the same level are comparable.

In this case, the comparison within heading 8708 is between other parts and accessories for bodies, in subheading 8708.29.50, HTSUS, and other parts and accessories, other, in subheading 8708.99.80, HTSUS. As the adjuster assembly is mounted by screws to the vehicle's B pillar, which we understand is part of the vehicle's body, the provision for other parts and accessories for bodies provides the most specific description for the goods.

Holding:

Under the authority of GRI 3(a), applied at the subheading level through GRI 6, adjuster assemblies for automobile safety seat belts, are classifiable in subheading 8708.29.5060, HTSUS.

NY 809031, dated April 20, 1995, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF GLASS AND METAL "PHOTO CUBE" WITH CANDLE AND HOLDER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and the treatment relating to the classification of glass and metal "photo cube" with candle holder and candle.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of a "photo cube" consisting of a glass and metal cube, glass candle holder, and candle under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before June 4, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Paul G. Hegland, General Classification Branch (202) 927–1172.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective.

Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke or modify a ruling pertaining to the tariff classification of a "photo cube" consisting of a glass and metal cube configured to display photographs on four sides, glass candle holder, and candle. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) C88496 dated June 19, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on the merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY C88496 dated June 19, 1998, Customs ruled that the glass and metal cube, candle holder, and candle making up the "photo cube" was

not a set put up for retail sale and that each of these components must be classified separately. Customs held the glass and metal cube to be classified in subheading 7013.99.50, HTSUS, as other glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes; the candle holder to be classified in subheading 9405.50.40, HTSUS, as other non-electrical lamps and light fittings; and the candle to be classified in subheading 3406.00.00, HTSUS, as candles, tapers and the like. NY C88496 is set forth as "Attachment A" to this document.

Based on additional information provided by the importer and an examination of a sample, we are now of the opinion that the glass and metal cube, candle holder, and candle, packaged in a retail box ready for sale upon importation, comprise sets put up for retail sale for purposes of General Rule of Interpretation (GRI) 3(b) and that the essential character of the sets is provided by the glass and metal cube, which is a composite good classified in subheading 7013.99.50, HTSUS, as other glassware of a kind used for indoor decoration or similar purposes.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY C88496, and revoke any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 962090 (*see* "Attachment B" to this document) . Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 19, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 19, 1998.

CLA–2–70:RR:NC:2:226 C88496
Category: Classification
Tariff No. 7013.99.5000,
9405.50.4000, and 3406.00.0000

MS. PAULA M. CONNELLY
MIDDLETON & SHRULL
44 Mall Road
Suite 208
Burlington, MA 01803–4530

Re: The tariff classification of a decorative glass article with a candleholder and candle from China.

DEAR MS. CONNELLY:

In your letter dated June 1, 1998, on behalf of your client, Fetco International, Inc., you requested a tariff classification ruling. A representative sample of the item was submitted with your ruling request.

The subject article, which is referred to as "Votive Photo Cube", is a four-sided glass cube measuring 4 inches in height by 4 inches in width. In your letter, you stated that the glass cube will be used as a photo frame. Each side contains two glass panels, an inner one that is made of frosted glass and an outer one that is made of clear glass. All four sides are connected by a silver colored metal frame. Each side has an opening on top which enables a 3″ x 3″ photo to be inserted between the two glass panels. The bottom of the article has a metal lattice-like design which may be utilized to hold a candle. A two inch glass candleholder with candle is included with the article.

You suggested in your letter that this merchandise should be classified under subheading 8306.30, Harmonized Tariff Schedule of the United States (HTS), which provides for photograph, picture or similar frames, of base metal. However, the essential character of the decorative glass cube is represented by the glass, not the metal, because of the substantial amount of glass in the item. It is the glass, not the metal, which constitutes the body of the article. It is the glass which performs the cube's function of holding photographs. Therefore, subheading 8306.30, HTS, is not applicable.

In your letter, you suggested that the three items (decorative glass cube, glass candleholder and candle) be regarded as a set. However, the glass decorative cube which functions as a photo frame has a different purpose than the other articles. Therefore, the three items cannot be regarded as a set dedicated to a specific need or activity. Each item is classified separately.

The applicable subheading for the decorative glass cube will be 7013.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: other glassware: other: other: valued over $0.30 but not over $3 each. The rate of duty will be 30 percent ad valorem.

The applicable subheading for the glass candleholder will be 9405.50.4000, HTS, which provides for other non-electrical lamps and light fittings. The rate of duty will be 6.3 percent ad valorem.

The applicable subheading for the votive candle will be 3406.00.0000, HTS, which provides for candles, tapers and the like. The rate of duty will be 1.2 percent ad valorem.

The Department of Commerce (DOC) has determined that petroleum wax candles in the following shapes: tapers, spirals, straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers are subject to Antidumping Duty order on petroleum wax candles from China.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 212–466–5796.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962090 PH
Category: Classification
Tariff No. 7013.99.50

PAULA M. CONNELLY, ESQ.
MIDDLETON & SHRULL
44 Mall Road, Suite 208
Burlington, MA 01803–4530

Re: "Photo cube" with votive-style candle; Revocation of NY C88496.

DEAR MS CONNELLY:

This is in reference to your request, on behalf of FETCO International, Inc., dated July 23, 1998, that we reconsider New York Ruling Letter (NY) C88496 issued to you on June 19, 1998, in response to your letter of June 1, 1998, on behalf of FETCO, to the National Commodity Specialist Division in New York, in regard to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a "Votive Photo Cube". A sample was provided. We have reconsidered this ruling and now believe that it is incorrect. This proposed ruling sets forth the correct classification and the analysis therefor. We regret the delay.

Facts:

The merchandise consists of a four-sided glass cube measuring 4 inches in height by 4 inches in width. Each side contains two glass panels, an inner one made of frosted glass and an outer one made of clear glass. The four side are connected by a silver-colored metal frame. Each side has an opening on top which enables a 3″ X 3″ photo to be inserted between the two glass panels. The bottom of the article has a metal lattice-like design with a centered, raised circle of metal over the metal cross-pieces which may be utilized to hold a candle. A two inch glass "votive-style" candle holder with a candle is included with the article. The base of the candle holder fits snugly into the raised circle of metal in the base of the glass cube.

In NY C88496, we held that the article is not a set put up for retail sale and the glass and metal cube, candle holder, and candle must be classified separately. We held the glass and metal cube to be classified in subheading 7013.99.50, HTSUS, as other glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes; the candle holder to be classified in subheading 9405.50.40, HTSUS, as other non-electrical lamps and light fittings; and the candle to be classified in subheading 3406.00.00, HTSUS, as candles, tapers and the like.

You state that all of the components of the article will be imported into the United States together, packaged in a retail box, ready for retail sale. You state that the metal component provides more than half of the value of the article (including the cube, candle holder, and candle), with the glass component (not including the candle holder) providing about 35% of the value. You state that the candle, when lit, illuminates the back of the photographs and does not provide lighting for the surrounding area. You contend that the article is a set put up for retail sale, as described in General Rule of Interpretation (GRI) 3, and that the essential character of the set is provided by the glass cube and that of the glass cube is provided by the metal component.

Issues:

(1) Whether the "photo cube" (without the candle holder and candle) is classifiable as a picture or similar frame of base metal in heading 8306, HTSUS, or glassware of a kind used for indoor decoration or similar purposes in heading 7013, HTSUS.

(2) Whether the "photo cube," consisting of the glass and metal cube, candle holder, and candle, comprise goods put up in sets for retail sale for purposes of GRI 3(b) and, if so, which component of the set provides its essential character.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the GRIs. GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6, taken in order. Under GRI 2(a), any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. Pursuant to GRI 3(b), goods which are *prima facie* classifiable under two or more headings, and which are mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, shall be classified as if they consisted of the material or component which gives them their essential character.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The 1999 HTSUS headings under consideration are as follows:

3406	Candles, tapers and the like
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included

EN GRI 3(b)(IX) states that "[f]or purposes of [GRI 3(b)], composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole. * * *" The glass and metal cube is not classifiable under GRI 1 (see below) and the glass and metal components thereof form a practically inseparable whole. The glass and metal cube is a composite good for purposes of GRI 3(b) and is classifiable according to the component which provides its essential character.

EN GRI 3(b)(X) states that:

> For purposes of [GRI 3(b)], the term 'goods put up in sets for retail sale' shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are *prima facie*, clarifiable in different headings * * *;
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The glass and metal cube, candle holder, and candle are *prima facie* classifiable in different headings (respectively heading 7013 or 8306, heading 3406, and heading 9405). The articles are put up together to meet a particular need or carry out a specific activity (to display photographs), and, in their condition as imported, are packaged in a retail box, ready for retail sale. We note, in particular, the raised metal circle at the base of the cube which is configured so that the candle holder fits snugly into the center of the base of the cube.

Therefore, the glass and metal cube, candle holder, and candle make up "goods put up in sets for retail sale" for purposes of GRI 3(b). The classification of the set is determined by the good of the set which gives it its essential character.

Initially, we will examine the essential character of the glass and metal cube composite good (see, in this regard, EN 83.06(C), indicating, although in a somewhat different context, that composite articles comprised, in part of picture frames of base metal, are to be classified in heading 8306 "when the essential character of the whole is given by the frames"). The term "essential character" is not defined in the HTSUS. According to EN GRI 3(b)(VIII), "[t]he factor which determines essential character will vary as between different kinds of goods[;] [i]t may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed* 119 F.3d 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. Customs had classified the sets on the basis of the textile curtain under the "default rule of GRI 3(c)", after determining that neither the relative specificity test nor the essential character test was applicable (119 F.3d at 971). The CIT found that the plastic liner performed the indispensable function of keeping water inside the shower and therefore held that the plastic liner imparted the essential character upon the set. In its decision affirming the CIT decision, the CAFC stated:

> The [CIT] carefully considered all of the facts, and, after a reasoned balancing of all the facts, concluded that Better Home Plastics offered sufficient evidence and argument to overcome the presumption of correctness. The court concluded that the indispensable function of keeping water inside the shower along with the protective, privacy and decorative functions of the plastic liner, and the relatively low cost of the sets *all combined* to support the decision that the plastic liner provided the essential character of the sets. [119 F.3d at 971]

Other decisions in which the Court looked primarily to the role of the constituent material in relation to the use of the goods to determine essential character include *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995).

We believe that the indispensable function of the glass and metal cube is the decorative display of photographs. The glass is the component which is essential for this function. That is, the glass protects and allows the photographs to be viewed, whereas the metal serves the secondary purpose of holding the glass in place. Although the metal provides the form of the cube, the glass is essential to perform the "indispensable function" of the article, displaying photographs.

Of the criteria listed in EN GRI 3(b)(VIII) other than the roles of the constituent materials, bulk, quantity, and weight also support the conclusion that the glass component of the cube imparts its essential character. In regard to the remaining criterion (value), although the cost breakdown you provide indicates a greater cost for the metal component than the glass component, we note that in *Better Home Plastics*, *supra*, even though the relative value of the textile curtain was greater than that of the plastic liner, the plastic liner was held to impart the essential character (see also Headquarters Ruling Letters (HQs) 086166, dated April 9, 1990, and 952676 dated December 29, 1992, each of which held that the glass component of glass and metal boxes imparted the essential character, notwithstanding that the relative value of the metal component was greater than that of the glass component). We conclude that the glass imparts the essential character to the glass and metal cube.

Insofar as the question of which good provides the essential character in the set consisting of the glass and metal cube, candle holder, and candle is concerned, the criteria for the determination of the essential character of a set are the same as the criteria for determining the essential character of a composite good (see above, and EN GRI 3(b)(VI) through (VII)). After viewing the article with the candle lit, we concur with your conclusion that the candle "merely illuminates the 'photo cube' and provides a special lighting effect [but] does not illuminate the surrounding area." The "indispensable function" of the set remains the decorative display of photographs. As is true of the glass component in the glass and metal cube, the cube in the set is essential for this function, as it protects and allows the

photographs to be viewed, whereas the candle and candle holder may support this function by illuminating and providing a special effect for the photographs, but are not essential for it. The essential character of the set is provided by the glass and metal cube composite good, which is classified in heading 7013, pursuant to the essential character analysis above. The set is classified as other glassware of a kind used for indoor decoration or similar purposes in subheading 7013.99.50, HTSUS.

We note that "* * * scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks[,] sold in the * * * shapes [of] tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax filled containers" from the People's Republic of China and classified in subheading 3406.00.00, HTSUS, are subject to antidumping duties (Notice of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, Case A–570–504, Federal Register of August 28, 1986 (51 F.R. 30686)). The "votive-style" candle in the set would be covered by this antidumping order.

Holdings:

(1) The "photo cube" (without the candle holder and candle) is a composite good for purposes of GRI 3(b); the essential character of the photo cube is provided by the glass component; and it is classified as glassware of a kind used for indoor decoration or similar purposes in heading 7013, HTSUS.

(2) The "photo cube," consisting of the glass and metal cube, candle holder, and candle, packaged in a retail box ready for sale upon importation, comprise goods put up in sets for retail sale for purposes of GRI 3(b); the photo cube provides the essential character of the set; and the set is classified as glassware of a kind used for indoor decoration or similar purposes, other glassware, other, other, other, valued over $0.30 but not over $3 each, in subheading 7013.99.50, HTSUS.

Effect on Other Rulings:

NY C88496 dated June 19, 1998, is REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF KEYBOARD STORAGE DRAWER

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of keyboard storage drawer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking New York Ruling Letter (NY) 886420, and any treatment previously accorded by Customs to substantially identical transactions, relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a computer keyboard storage drawer.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse on or after July 5, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927–2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), by notice published on March 3, 1999, in the CUSTOMS BULLETIN, Volume 33, No. 8/9, Customs proposed to revoke NY 886420, dated May 27, 1993, which classified a keyboard storage drawer in subheading 8304.00.00, HTSUS, which provides for desk-top filing or card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment and parts thereof, of base metal. No comments were received in response to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs is revoking NY 886420 to classify the merchandise in subheading 8473.30.50, HTSUS, which provides for other parts and accessories intended for use with computers. HQ 962730 revoking NY 886420 is set forth as an attachment to this document. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may,

among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

Dated: April 15, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 15, 1999.

CLA–2:RR:CR:GC 962730:AML
Category: Classification
Tariff No. 8473.30.90

MS. CINDY SHIMMEL
THE I.C.E. COMPANY, INC.
P.O. Box 610583
Dallas/Fort Worth Airport, TX 72561–0583

Re: NY 886420 revoked; computer keyboard storage drawer.

DEAR MS. SHIMMEL:

In New York Ruling Letter (NY) 886420, issued to you on May 27, 1993, by the Director, Customs National Commodity Specialist Division, New York, a computer keyboard storage drawer was classified under subheading 8304.00.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for desk-top filing or card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands, and similar office and desk equipment and parts thereof, of base metal.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 886420 was published on March 3, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 8/9. No comments were received in response to this notice.

Facts:

The article in NY 886420 was described as a desktop keyboard storage drawer which consisted of a solid steel case with an interior plastic, easy-glide drawer. The case was capable of supporting a monitor and central processing unit (CPU) and the drawer accommodated a keyboard.

Issue:

Whether the keyboard storage drawer is properly classifiable within subheading 8304.00.00, HTSUS, which provides for desk-top filing or card-index cabinets * * * and

similar office or desk equipment * * * of base metal, other than office furniture of heading 9403; 8473.30.50, HTSUS, which provides for other parts and accessories suitable for use solely or principally with the machines of heading 8471, not incorporating a CRT; or 9403.10.00, HTSUS, which provides for other furniture of metal of a kind used in offices.

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI's). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The applicable subheadings under consideration are as follows:

8304.00.00	Desk-top filing or card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment and parts thereof, of base metal, other than office furniture of heading 9403.
* * * * * * * *	
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472:
8473.30	Parts and accessories of the machines of heading 8471: Not incorporating a cathode ray tube:
8473.30.50	Other.
* * * * * * * *	
9403	Other furniture and parts thereof:
9403.10.00	Metal furniture of a kind used in offices.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Classification of the subject article within subheading 9403.10.00 has been suggested. We address this heading first because, if the article is described in this heading, classification in either of the other headings is precluded by the specific exclusion of office furniture of heading 9403 enumerated in heading 8304, and EN 84.73. Heading 9403, HTSUS, provides for other furniture and parts thereof. Chapter 94, Note 2 provides that in order to be classified within this heading, an article must be designed for placing on the floor or ground, unless the articles are "[c]upboards, bookcases or other shelved furniture and unit furniture" or "[s]eats and beds" which are "designed to be hung, to be fixed to the wall or to stand one on the other." The subject article does not satisfy this requirement; it is designed to be placed onto a desk. Nor does it fall within the exception, *i.e.*, it is not designed to "be hung, to be fixed to the wall or to stand one on the other." Accordingly, classification in heading 9403, HTSUS, is precluded.

EN 83.04, p. 1215 states:

> The heading covers filing cabinets, card-index cabinets, sorting boxes and similar office equipment used for the storage, filing or sorting of correspondence, index cards or other papers, provided the equipment is not designed to stand on the floor or is not otherwise covered by Note 2 to Chapter 94 (heading 94.03) (see the General Explanatory Note to Chapter 94). The heading also includes paper trays for sorting documents, paper rests for typists, desk racks and shelving, and desk equipment (such as bookends, paperweights, inkstands and ink-pots, pen trays, office-stamp stands and blotters).

In HQ 089415, dated November 7, 1991, Customs classified a Cathode Ray Tube (CRT) Valet within subheading 8473.30.40, HTSUS, which provided "for parts and accessories of the machines of heading 8471 which do not incorporate a CRT." In that ruling, consideration was given to classification of the CRT Valet in subheading 8304, HTSUS, which provided for "[d]esk-top filing or card-index cabinets * * * and similar office or desk equipment * * * of base metal, other than furniture of heading 9403." In that ruling we interpreted the

scope of subheading 8304.00.00, HTSUS, *vis-a-vis* the rule of statutory construction, *ejusdem generis*, as follows:

> [t]he Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). Heading 8304, HTSUS, consists of particular words (*i.e.*, paper trays, paper rests etc.) followed by general terms (*i.e.*, similar office or desk equipment). Therefore, this heading requires an *ejusdem generis* method of construction.
>
> The CIT further stated that "[a]s applicable to Customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157. The subject CRT valets are not *ejusdem generis* with the articles described within heading 8304, HTSUS. They are not equipment used to hold or store similar desk or office articles (*i.e.*, index cards, files, paper, pens etc.). The valets are more accurately described as stands for the machines of heading 8471, HTSUS. Accordingly, the subject valets do not satisfy the terms of heading 8304, HTSUS, and are not, therefore, properly classifiable therein.

The rule of statutory construction *ejusdem generis* has been further explained in the treatise *Customs Law & Administration* as follows:

> [a]nother rule of statutory construction is that of *ejusdem generis*, the substance of which is that where particular words of description are followed by general terms, the latter will be regarded as referring to things of like class with those particularly described. It is invoked as an aid to statutory construction and is applicable when doubt arises as to whether a given article is to be placed in a class of which some individual objects are named. *United States v. Damrak Trading Co., Inc.*, 43 CCPA 77, 79, C.A.D. 611 (1956) (citations omitted); *Merck and Co. (Inc.) v. United States*, 19 CCPA 16, 18, T.D. 44852 (1931), (citations omitted). It may not be resorted to where there is no doubt as to the meaning of a term. *John V. Carr & Son v. United States*, 77 Cust. Ct. 103, C.D. 4679 (1976).
>
> * * * * * * *
>
> The rule may not be invoked to narrow, limit or circumscribe an enactment and is never applied if the intention of the legislature can be ascertained without resort thereto. *Sandoz Chemical Works, Inc. v. United States*, 50 CCPA 31, 35, C.A.D. 815 (1963). Sturm, Ruth; *Customs Law & Administration*, 3rd Edition, section 51.10, p. 67.

The subject article is designed specifically to house a computer keyboard. Although the drawer itself is manufactured with compartments intended to hold pens and paper clips, its fundamental design feature is the drawer manufactured with an impression designed to hold the keyboard and act as a stand for the computer monitor. This design feature keeps both in close proximity of each other as they are normally used with the computer. Further, by virtue of the compartment manufactured specifically to house and stabilize the keyboard, the product cannot be deemed to be a paper organizer or desk top holder of papers or supplies as contemplated by heading 8304, HTSUS. Accordingly, classification in heading 8304, HTSUS, is precluded.

EN 84.73 at pp. 1411 and 1412, states in pertinent part:

> Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts and accessories suitable for use solely or principally with the machines of headings 84.69 to 84.72.
>
> The accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.
>
> * * * * * * *
>
> But the heading excludes covers, carrying cases and felt pads; these are classified in their appropriate headings. It also excludes articles of furniture (e.g., cupboards and tables) whether or not specially designed for office use (heading 94.03). However, stands for machines of headings 84.69 to 84.72 not normally usable except with the machines in question, remain in this heading.

We note that the HTSUS does not contain a specific, uniform definition for the term "accessory." EN 84.73, above, defines "accessories" as "interchangeable parts or devices de-

signed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations."

In Headquarters Ruling Letter (HQ) 087704, dated September 27, 1990, we noted the absence of a definition of the term "accessory." We reached the following conclusion as to the meaning of the term "accessory" which we believe may be properly used as guidance in this instance:

> An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operations.)

The article houses a keyboard in a drawer which is molded to snugly house and stabilize the keyboard. The article also protects the keyboard when not in use, by shielding the keyboard within the metal housing. The metal housing is capable of acting as a stand for the ADP monitor, further confirming that the intended and practical uses of the article are as a storage drawer for a computer keyboard. Thus, in several ways the keyboard storage drawer is "designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations." The keyboard storage drawer is classified in heading 8473, HTSUS.

This decision comports with HQ 089415, dated November 7, 1991, which classified a CRT Valet pursuant to subheading 8473.30.40, HTSUS, 1991. The similarity with the instant matter is that the CRT Valet enhances the use and operation of the ADP monitor by enabling the user to reposition to monitor while the computer is in use, thereby enhancing the use and function of the computer. The keyboard storage drawer performs a similar function; it houses the keyboard when the computer is or is not in use, thereby clearing the work space for other tasks which do not rely on the computer. Because the drawer affects the use, function and operation of the computer, it will be classified as subheading 8473, HTSUS.

Holding:

The subject keyboard storage drawer is properly classifiable within subheading 8473.30.90, HTSUS, which provides for, *inter alia*, other parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with computers.

NY 886420 is **revoked**. In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 15, 1999.

CLA–2 RR:CR:GC 962144 AML
Category: Classification
Tariff No. 8473.30.50

ERIK D. SMITHWEISS, ESQUIRE
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN, LLP
245 Park Avenue
33rd Floor
New York, NY 10167–3397

Re: Keyboard storage drawer.

DEAR MR. SMITHWEISS:

In a letter to the Customs National Commodity Specialist Division, New York, dated August 10, 1998, on behalf of Staples, Inc., you request reconsideration of New York Ruling Letter (NY) 886420, dated May 27, 1993, concerning the classification of a keyboard storage drawer under the Harmonized Tariff Schedule of the United States (HTSUS). Your request has been forwarded to this office for reply, and a sample was submitted for our review. In preparing this decision, consideration was also given to arguments you presented in a meeting held on December 16, 1998.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 886420 was published on March 3, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 8/9. No comments were received in response to this notice.

Facts:

The subject article is a keyboard storage drawer that is designed for use with automatic data processing machines. It measures 15 and 1/2 inches deep, 22 inches wide and 3 and 3/4 inches high, and is comprised of a rectangular, metal housing which encloses a plastic drawer. The plastic drawer, which measures 9 and 7/8 inches deep, 20 and 3/4 inches wide and 3 and 1/4 inches high, is molded to hold a computer keyboard. The article is composed of 83% metal and 17% plastic by value, and is designed to enhance the use of and house the keyboard by means of the drawer, which is extended while in use and retracted within the housing when not in use. The sturdy metal housing acts as a stand for the monitor of the computer.

Issue:

Whether the keyboard storage drawer is properly classifiable within subheading 8304.00.00, HTSUS, which provides for desk-top filing or card-index cabinets * * * and similar office or desk equipment * * * of base metal, other than office furniture of heading 9403; 8473.30.50, HTSUS, which provides for other parts and accessories suitable for use solely or principally with the machines of heading 8471, not incorporating a CRT; or 9403.10.00, HTSUS, which provides for other furniture of metal of a kind used in offices.

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI's). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The applicable subheadings under consideration are as follows:

8304.00.00	Desk-top filing or card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment and parts thereof, of base metal, other than office furniture of heading 9403.
* * * * * * *	
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472:
8473.30	Parts and accessories of the machines of heading 8471: Not incorporating a cathode ray tube:
8473.30.50	Other.
* * * * * * *	
9403	Other furniture and parts thereof:
9403.10.00	Metal furniture of a kind used in offices.

When interpreting and implementing the HTSUS, the Explanatory Notes (EN's) of the Harmonized Commodity Description and Coding System may be utilized. The EN's, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Classification of the subject article within subheading 9403.10.00 has been suggested. We address this heading first because, if the article is described in this heading, classification in either of the other headings is precluded by the specific exclusion of office furniture

of heading 9403 enumerated in heading 8304, and EN 84.73. Heading 9403, HTSUS, provides for other furniture and parts thereof. Chapter 94, Note 2 provides that in order to be classified within this heading, an article must be designed for placing on the floor or ground, unless the articles are "[c]upboards, bookcases or other shelved furniture and unit furniture" or "[s]eats and beds" which are "designed to be hung, to be fixed to the wall or to stand one on the other." The subject article does not satisfy this requirement; it is designed to be placed onto a desk. Nor does it fall within the exception, *i.e.*, it is not designed to "be hung, to be fixed to the wall or to stand one on the other." Accordingly, classification in heading 9403, HTSUS, is precluded.

EN 83.04, p. 1215 states:

> The heading covers filing cabinets, card-index cabinets, sorting boxes and similar office equipment used for the storage, filing or sorting of correspondence, index cards or other papers, provided the equipment is not designed to stand on the floor or is not otherwise covered by Note 2 to Chapter 94 (heading 94.03) (see the General Explanatory Note to Chapter 94). The heading also includes paper trays for sorting documents, paper rests for typists, desk racks and shelving, and desk equipment (such as bookends, paperweights, inkstands and ink-pots, pen trays, office-stamp stands and blotters).

In HQ 089415, dated November 7, 1991, Customs classified a Cathode Ray Tube (CRT) Valet within subheading 8473.30.40, HTSUS, which provided "for parts and accessories of the machines of heading 8471 which do not incorporate a CRT." In that ruling, consideration was given to classification of the CRT Valet in subheading 8304, HTSUS, which provided for "[d]esk-top filing or card-index cabinets * * * and similar office or desk equipment * * * of base metal, other than furniture of heading 9403." In that ruling we interpreted the scope of subheading 8304.00.00, HTSUS, *vis-a-vis* the rule of statutory construction, *ejusdem generis*, as follows:

> [t]he Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). Heading 8304, HTSUS, consists of particular words (*i.e.*, paper trays, paper rests etc.) followed by general terms (*i.e.*, similar office or desk equipment). Therefore, this heading requires an *ejusdem generis* method of construction.
>
> The CIT further stated that "[a]s applicable to Customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157. The subject CRT valets are not *ejusdem generis* with the articles described within heading 8304, HTSUS. They are not equipment used to hold or store similar desk or office articles (*i.e.*, index cards, files, paper, pens etc.). The valets are more accurately described as stands for the machines of heading 8471, HTSUSA. Accordingly, the subject valets do not satisfy the terms of heading 8304, HTSUSA, and are not, therefore, properly classifiable therein.

The rule of statutory construction *ejusdem generis* has been further explained in the treatise *Customs Law and Administration* as follows:

> [a]nother rule of statutory construction is that of *ejusdem generis*, the substance of which is that where particular words of description are followed by general terms, the latter will be regarded as referring to things of like class with those particularly described. It is invoked as an aid to statutory construction and is applicable when doubt arises as to whether a given article is to be placed in a class of which some individual objects are named. *United States v. Damrak Trading Co., Inc.*, 43 CCPA 77, 79, C.A.D. 611 (1956) (citations omitted); *Merck and Co. (Inc.) v. United States*, 19 CCPA 16, 18, T.D. 44852 (1931), (citations omitted). It may not be resorted to where there is no doubt as to the meaning of a term. *John V. Carr & Son v. United States*, 77 Cust. Ct. 103, C.D. 4679 (1976).
>
> * * * * * * *
>
> The rule may not be invoked to narrow, limit or circumscribe an enactment and is never applied if the intention of the legislature can be ascertained without resort thereto. *Sandoz Chemical Works, Inc. v. United States*, 50 CCPA 31, 35, C.A.D. 815 (1963). Sturm, Ruth; *Customs Law & Administration*, 3rd Edition, section 51.10, p. 67.

The subject article is designed specifically to house a computer keyboard. Although the drawer itself is manufactured with compartments intended to hold pens and paper clips, its

fundamental design feature is the drawer manufactured with an impression designed to hold the keyboard and act as a stand for the computer monitor. This design feature keeps both in close proximity of each other as they are normally used with the computer. Further, by virtue of the compartment manufactured specifically to house and stabilize the keyboard, the product cannot be deemed to be a paper organizer or desk top holder of papers or supplies as contemplated by heading 8304, HTSUS. Accordingly, classification in heading 8304, HTSUS, is precluded.

EN 84.73 at pp. 1411 and 1412, states in pertinent part:

> Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts and accessories suitable for use solely or principally with the machines of headings 84.69 to 84.72.
>
> The accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.
>
> * * * * * * *
>
> But the heading excludes covers, carrying cases and felt pads; these are classified in their appropriate headings. It also excludes articles of furniture (e.g., cupboards and tables) whether or not specially designed for office use (heading 94.03). However, stands for machines of headings 84.69 to 84.72 not normally usable except with the machines in question, remain in this heading.

We note that the HTSUS does not contain a specific, uniform definition for the term "accessory." EN 84.73, above, defines "accessories" as "interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations."

In Headquarters Ruling Letter (HQ) 087704, dated September 27, 1990, we noted the absence of a definition of the term "accessory." We reached the following conclusion as to the meaning of the term "accessory" which we believe may be properly used as guidance in this instance:

> An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operations.)

The article houses a keyboard in a drawer which is molded to snugly house and stabilize the keyboard. The article also protects the keyboard when not in use, by shielding the keyboard within the metal housing. The metal housing is capable of acting as a stand for the ADP monitor, further confirming that the intended and practical uses of the article are as a storage drawer for a computer keyboard. Thus, in several ways the keyboard storage drawer is "designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations." The keyboard storage drawer is classified in heading 8473, HTSUS.

This decision comports with HQ 089415, dated November 7, 1991, which classified a CRT Valet pursuant to subheading 8473.30.40, HTSUS, 1991. The similarity with the instant matter is that the CRT Valet enhances the use and operation of the ADP monitor by enabling the user to reposition the monitor while the computer is in use, thereby enhancing the use and function of the computer. The keyboard storage drawer performs a similar function; it houses the keyboard when the computer is or is not in use, and may serve as a stand for the monitor, thereby enhancing the use and function of the computer.

Holding:

The subject keyboard storage drawer is properly classifiable within subheading 8473.30.50, HTSUS, which provides for, *inter alia*, other parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with computers.

By HQ 962730 of this date, NY 886420 was revoked.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF A RULING LETTER RELATING TO THE CLASSIFICATION OF A HANDBAGS WITH BRAIDED LEATHER STRAPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)), this notice advises interested parties that Customs is revoking New York Ruling Letter (NY) D82380, dated September 29, 1998, concerning the tariff classification of two textile handbags with braided leather straps under heading 4202 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 5, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hollaway, Commercial Rulings Division (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

On March 3, 1999, Customs published in the CUSTOMS BULLETIN, Volume 33, No. 8/9, a notice of a proposal to revoke NY D82380, dated September 29, 1998. In that ruling, Customs classified two textile handbags with leather braided straps under subheading 4202.22.8050, HTSUSA, which provides for handbags, whether or not with shoulder strap, including those without handle, with outer surface of textile materials, other, of man-made fibers. The handbags should have been classified

under subheading 4202.22.4030, HTSUSA, which provides for other handbags, whether or not with shoulder strap, including those without handle, with outer surface of textile materials, wholly or in part of braid.

Customs received one comment concerning the proposed revocation. The concerns raised in that comment are addressed in the revocation ruling letter.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that Customs is revoking NY D82380, dated September 29, 1998. HQ 962357 revoking NY D82380 is set forth in the attachment to this document.

Dated: April 16, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 16, 1999.

CLA–2 RR:CR:TE 962357 RH
Category: Classification
Tariff No. 4202.22.4030

GRAHAM & JAMES LLP
885 Third Avenue, 24th floor
New York, NY 10022–4834

Re: Revocation of NY D82380, dated September 29, 1998; Classification of handbags with braided leather straps; heading 4202.

DEAR GENTLEMEN:

This is in reply to your letter of November 6, 1998, requesting reconsideration of New York Ruling Letter (NY) D82380, dated September 29, 1998, concerning the classification of two textile handbags with braided leather straps.

You sent samples of each bag to aid us in our determination.

Initially, we note that your request for expedited treatment under 19 U.S.C. §1625 is denied. A ruling request based on an undesirable duty rate does not establish reasonable business necessity.

Pursuant to section 1625(c)(1) of the United States Code (19 U.S.C. §1625(c)(1)), notice of the proposed revocation of NY D82380 was published on March 3, 1999, in the CUSTOMS BULLETIN, Volume 33, No. 8/9.

Facts:

The merchandise at issue consists of two textile handbags with permanently attached braided leather straps. A description of the merchandise in NY D82380 reads:

> The samples submitted, identified as styles DH840089 and DH840096, are handbags manufactured with an exterior surface of man-made textile materials. Subheading 4202.22. provides for Handbags, with or without handles or shoulder straps. The shoulder straps herein are "de minimis". Style DH840089 measures approximately 6½" (H) x 7" (W) with 2½" gussets. Style DH840096 measures approximately 9" (H) x 11" (W) with 3" gussets.

In NY D82380, Customs classified both handbags under subheading 4202.22.8050 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for handbags, whether or not with shoulder strap, including those without handle, with outer surface of textile materials, other, of man-made fibers. You argue that Customs should have classified the handbags under subheading 4202.22.40, HTSUSA, which provides for handbags, with outer surface of textile materials: wholly or in part of braid, other.

Issue:

What is the proper classification of handbags with braided leather straps under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

It is undisputed that the handbags are classifiable under subheading 4202.22, HTSUSA, which encompasses handbags, with outer surface of textile materials. At the 8-digit level, we must determine if the bags are classifiable as "wholly of" or "in part of" braid.

General Note (GN) 19(e), HTSUSA, reads as follows:

> (e) the terms "wholly of", "in part of", and "containing", when used between the description of an article and a material (e.g., "woven fabrics, wholly of cotton"), have the following meanings:
>
> (i) "wholly of" means that the goods are, except for negligible or insignificant quantities of some other material or materials, composed completely of the named material;
>
> (ii) "in part of" or "containing" mean that the goods contain a significant quantity of the named material.
>
> With regard to the application of the quantitative concepts specified above, it is intended that the *de minimis* rule apply.

The *de minimus* rule states that an ingredient or component of an article may be ignored for classification purposes depending upon "whether or not the amount used has really changed or affected the nature of the article and, of course, its salability." *Varsity Watch Company v. United States*, 34 CCPA 155, C.A.D. 359 (1947).

You cite two headquarters ruling letters (HQ) in which we held that the braided straps on handbags were more than *de minimus*. In HQ 089386, dated March 18, 1992, Customs held that the braided shoulder straps on a ladies evening handbag were fully functional and likely to be used to carry the bag over the shoulder. Moreover, Customs found that the braided straps enhanced the utility and style of the bag and were a commercially significant part thereof. The ruling stated that "[t]he braid itself is a more extravagant way of forming the shoulder strap, and adds to the expense and complexity of manufacture." Additionally, in HQ 959062, dated January 28, 1997, Customs held that a handbag was classifiable "in part of braid" where the braided material on the handbag was fully functional, formed the entire strap and heightened the bag's overall aesthetic appeal.

On the other hand, Customs has ruled that similar bags were "not in part of braid" where the bag had only a 1/8 inch wide braided strip of fabric attached to the top of the bag to hold together gathers, or where the braid was sewn into the fabric so that it could not be seen. HQ 081483, dated April 27, 1989. Similarly, in HQ 088050, dated January 10, 1991, Customs considered *de minimis* a small braided strip of fabric, measuring 1/8 inch wide, which was used to hold the gathers of a child's handbag secure.

In the instant case, the braided leather straps on the two handbags are similar to the braided textile straps in HQ 089386 and HQ 959062. The braided straps are fully functional and are designed to carry the handbags over the shoulder. Moreover, the braid forms the entire length of the shoulder straps and heightens the bags' aesthetic appeal. Accordingly, we find that the handbags are classifiable as "in part of braid."

We note that a superior subheading which provides for "With outer surface of textile materials" does not mean that a subordinate subheading "Wholly or in part of braid" is limited to textile braids. Such a subheading is descriptive in nature and does not require the braid to be of textile materials. On the other hand, subheadings subordinate to "Wholly or in part of braid" which provide for materials (e.g., "Of abaca") do refer back to the superior subheading "With outer surface of textile materials."

Holding:

The braided shoulder straps on the handbags at issue are more than *de minimis*. Accordingly, the handbags are classifiable under subheading 4202.22.4030, HTSUSA, which provides for "Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Wholly or in part of braid: Other." They are dutiable at the 1999 general one column rate of 7.9 percent *ad valorem*, and the textile restraint category is 670.

NY D82380 is revoked. In accordance with 19 U.S.C. §1625(c)(1), this ruling will become affective 60 days after its publication in the CUSTOMS BULLETIN.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF AIR IONIZER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to tariff classification of air ionizer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 [19 U.S.C. 1625(c)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of the "Airtoner Pulsar" air ionizer and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on March 10, 1999, in the CUSTOMS BULLETIN, Vol. 33, No. 10.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 5, 1999.

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro, General Classification Branch, (202) 927–2244.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L.

103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

On March 10, 1999, a notice of proposed revocation of Headquarters Ruling Letter (HQ) 082701, issued on October 12, 1988, was published in the CUSTOMS BULLETIN, Volume 33, No. 10. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C.1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 082701 and any other Customs ruling that may exist which has not been specifically identified, to reflect the proper classification of the "Airtone Pulsar" air ionizer as filtering or purifying apparatus, for gases under subheading 8421.39.80, HTSUS. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by

the Customs Service to substantially identical transactions. Headquarters Ruling Letter 960993, revoking HQ 082701, is set forth as the attachment to this document.

Dated: April 19, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 19, 1999.

CLA–2 RR:CR:GC 960993 HMC
Category: Classification
Tariff No. 8421.39.80

MR. JOSEPH CATANZARITE
2502 Petaluma Ave.
Long Beach, CA 90815

Re: Airtone Pulsar; Air Ionizer; Subheading 8543.80.90; Explanatory Notes 84.21 and 85.43; Filtering or Purifying Machinery and Apparatus for Gases; HQ 082701, Revoked.

DEAR MR. CATANZARITE:

In Headquarters Ruling Letter (HQ) 082701, issued to you on October 12, 1988, Customs classified the "Airtone Pulsar" air ionizer under subheading 8543.80.90 of the Harmonized Tariff Schedule of the United States (HTSUS), as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. We have reviewed this ruling and determined that the classification set forth is in error. Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (1993), notice of the proposed revocation of HQ 082701 was published on March 10, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 10. No comments were received in response to the notice.

Facts:

HQ 082701, dated October 12, 1988, described the merchandise as follows:

> The merchandise in question is an air ionizer called, "The Airtone Pulsar." The literature submitted with the request for classification gives the following description of the merchandise. The Pulsar is designed for both residential and commercial use. It is said to emit ions into the air which counteract the debilitating side effects of air conditioning, smoking and city air pollution, and relieve the stuffiness encountered in office buildings induced by modern static-proof plastics, fabrics and carpets.

Issue:

Whether the "Airtone Pulsar" was correctly classified as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter under subheading 8345.80.90, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS, in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be

determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 3(a) states in part that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description.

In HQ 082701, Customs determined that the ionizer had the features of electrical machines and apparatus, having an individual function, and classified the merchandise under subheading 8543.80.90, HTSUS. We have reviewed that ruling and determined that another heading more specifically describes the ionizer. Heading 8421, HTSUS, provides for centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized system. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 85.43, at page 1518, states that

> This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.

EN 84.21, at page 1278, states that heading 8421 covers filtering or purifying machinery and apparatus for liquids or gases, other than, e.g., filter funnels, milk strainers, strainers for filtering paints (generally chapter 73). This EN further states, at page 1280, that

> (II) FILTERING OR PURIFYING MACHINERY AND APPARATUS, FOR LIQUIDS OR GASES
>
> Much of the filtration or purification plant of this heading is purely static equipment with no moving parts. The heading covers filters and purifiers of all types (physical or mechanical, chemical, magnetic, electro-magnetic, electrostatic, etc.). The heading covers not only large industrial plant, but also filters for internal combustion engines and small domestic appliances.

It is now Customs position that heading 8421 is more specific than heading 8543. The ionizer is a purifying apparatus that emits ions into the air which counteract the debilitating side effects of air conditioning, smoking and other pollutants. The merchandise is thus classifiable in subheading 8421.39.00 (now 8421.39.80), HTSUS, as filtering or purifying machinery and apparatus for gases, other, other. For a similar determination, *See* NY rulings 813642, dated September 11, 1995, 820493, dated January 9, 1987, 866005, dated August 23, 1991, and 806912, dated March 1, 1996, that classified air ionizers as filtering and purifying apparatus. Since HQ 082701 failed to consider heading 8421, it is revoked.

Holding:

The "Airtone Pulsar" air ionizer is classifiable under subheading 8421.39.00 (now 8421.39.80), HTSUS, as "Filtering or purifying machinery and apparatus for gases: Other: Other." The rate of duty is Free.

Effect on Other Rulings:

HQ 082701, dated October 12, 1988, is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO "HUGGIE HEARTS SHAREABLES" DOLL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of "Huggie Heart Shareables" doll.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of an article described as "Huggie Hearts Shareables" doll, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published in Vol. 33, No. 11 of the CUSTOMS BULLETIN dated March 17, 1999.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, General Classification Branch (202) 927–2404.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to Customs obligations, a notice of proposed revocation of New York

Ruling Letter (NYRL) B82880, was published in Vol. 33, No. 11 of the CUSTOMS BULLETIN dated March 17, 1999. The only comment received favored the proposal.

As stated in the proposed notice this revocation action will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar issue, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

After review and consideration of NYRL B82880 and its classification of the subject article in heading 4202, HTSUS, Customs is of the opinion that the "Huggie Heart Shareables" doll is not described by that heading. While the doll does have straps for carrying, its zippered pocket design feature does not provide sufficient space for us to find that the article's primary use is that of a "novelty backpack." (See Headquarters Ruling Letter (HRL) 958308, dated November 7, 1995.) Therefore, we have determined that the "Huggie Hearts Shareables" doll is properly classified in subheading 9502.10.00, HTSUS, as "[d]olls representing only human beings and parts and accessories thereof: [d]olls, whether or not dressed; [s]tuffed.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NYRL B82880, and any other Customs ruling that may exist which has not been specifically identified, to reflect the proper classification of the "Huggie Hearts Shareables" doll. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HRL 951502, revoking NYRL B82880, is set forth as an attachment to this document.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Dated: April 19, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 19, 1999.

CLA–2 RR:CR:GC 961502 MMC
Category: Classification
Tariff No. 9502.10.00

MR. GORDON ANDERSON
C.H. ROBINSON INTERNATIONAL INC.
8100 Mitchell Road
Eden Prairie, MN 55344–2231

Re: NYRL B82880 Revoked; "Huggie Heart Shareables" doll.

DEAR MR. ANDERSON:

This is in reference to your March 11, 1998, letter requesting reconsideration of New York Ruling Letter (NYRL) B82880 dated March 14, 1997, issued to you on behalf of Hanover Accessories, concerning the classification of a "Huggie Heart Shareables" doll/"backpack" under subheading 4202.92.1500, of the Harmonized Tariff Schedule of the United States (HTSUS), as travel, sports and similar bags, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, of cotton. A sample and marketing video were submitted for our review. In preparing this ruling we have considered the information provided in our meeting of April 15, 1998. A notice of proposed revocation of New York Ruling Letter (NYRL) B82880, was published in the CUSTOMS BULLETIN on March 17, 1999. The only comment recieved favored the proposal.

Facts:

The subject merchandise is described as a "Huggie Heart Shareables" doll. The article consists of a 3 dimensional doll. The doll exterior surface of the doll is composed of cotton/denim material. It's arms, legs and heart-shaped head are fully stuffed with fiber fill. The torso is partially stuffed. The remainder, the back portion of the torso, has a small zippered compartment which provides tote and storage capacity for a variety of separately sold accessories. The doll measures approximately 1 foot 3 inches long and 1 foot 2 inches wide at its widest part. The pocket portion of the doll measures approximately 5 inches long and 5 inches wide at its widest part. Attached to the head and torso of the doll are straps to enable a child to carry the doll on his or her back. The hang tag on the doll and its accessories reads: "These wearable Shareables are perfect for two. Share them & wear them on your arms on your legs as a skirt-in your hair. They can go on your Huggie Heart and also on you!"

Issue:

Whether the "Huggie Heart Shareables" is classifiable as a doll in heading 9502, HTSUS, or as a backpack in heading 4202, HTSUS?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRI). GRI 1 provides

that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI. The headings under consideration are as follows:

4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper

9502 Dolls representing only human beings and parts and accessories thereof

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive, or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN 95.02 states, in pertinent part, that:

> * * * [d]olls are usually made of rubber, plastics, textile materials, wax, ceramics, wood, paperboard, papier maché or combinations of these materials. They may be jointed and contain mechanisms which permit limb, head or eye movements as well as reproductions of the human voice, etc. They may also be dressed.

Based upon the ENs, and the article's physical characteristics we are of the opinion that the "Huggie Heart Shareables" doll is described by heading 9502, HTSUS. Concerning heading 4202, we are of the opinion that "Huggie Heart Shareables" doll is not described by the heading. While the doll does have straps for carrying, its zippered pocket design feature is so small that it may not practically serve as a pack for the child who carries the doll; instead, the practical use of the zippered pocket appears to be to store or carry the Shareables accessories. As such, this design does not provide sufficient space for us to find that the article's primary use is that of a "novelty backpack." For a full discussion of the classification of "novelty backpacks" see Headquarters Ruling Letter (HRL) 958308, dated November 7, 1995.

Holding:

The "Huggie Heart Shareables" doll is classifiable in subheading 9502.10.00, HTSUS, which provides for "[d]olls representing only human beings and parts and accessories thereof: [d]olls, whether or not dressed; [s]tuffed.

NYRL B82880 is revoked. In accordance with 19 U.S.C. §1625 (c)(1), this ruling will become affective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 4 and 159

RIN 1515–AC30

FOREIGN REPAIRS TO AMERICAN VESSELS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Customs Regulations regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States which undergo foreign shipyard operations. It is intended that the Customs Regulations regarding this subject accurately reflect the amended underlying statutory authority, as well as legal and policy determinations made as a result of judicial decisions and administrative enforcement experience.

DATE: Comments must be received on or before June 21, 1999.

ADDRESS: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Glenn Seale, Supervisory Customs Liquidator, 504–670–2137.

Legal aspects: Larry L. Burton, Office of Regulations and Rulings, 202–927–1287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The genesis of the modern vessel repair statute, 19 U.S.C. 1466, is found in the Act of July 18, 1866, Chapter 24, § 23 (14 Stat. 183). A 50 percent *ad valorem* duty was imposed on the foreign cost of repairs to United States vessels documented to engage in the foreign or coastwise trade on the northern, northeastern, and northwestern frontiers (practically speaking, Great Lakes, Atlantic, and Pacific Coast trade with

Canada). The statute also provided for remission or refund of duties where it was established by sufficient evidence that the vessel had been compelled to seek foreign repairs due to a weather-related or other casualty. The statute was recodified in the Revised Statutes of the United States in 1874 (R.S. 3114 and 3115), but was left largely unamended until the Act of September 21, 1922, at which time the area of consideration for dutiable repairs was expanded to include repairs to all vessels documented under U.S. law to engage in the foreign or coastwise trade, as well as those intended to be so employed.

The statute has undergone amendment several times since 1922 and has been the subject of considerable judicial interpretation over the years as well. Recently, however, the statute has been amended in significant ways and a court case with broad impact on the administration of the law has also been decided.

On August 20, 1990, the President signed into law the Customs and Trade Act of 1990 (Pub. L. 101–382), § 484E of which amended the vessel repair statute by adding a new subsection (h). Subsection (h), which by its terms expired on December 31, 1992, included two elements. These concerned the exclusion from vessel repair duty of Lighter Aboard Ship (LASH) barges, and of spare parts and materials for use in vessel repairs abroad which had previously been imported and duty paid at the appropriate rate under the Harmonized Tariff Schedule of the United States (HTSUS). Two years after the expiration of that legislation the Congress enacted § 112 of Pub. L. 103–465 which became effective on January 1, 1995. That provision permanently reenacted the previously expired 19 U.S.C. 1466(h)(1) and (2), as discussed above, and also added a new subsection (h)(3) which, as administered by Customs, provides that vessel repair duties will be assessed at the applicable HTSUS rate for spare parts which are necessarily installed on vessels overseas prior to those spare parts ever having been entered into the United States for entry and consumption, such as is necessary under the (h)(2) provision.

The most basic issue to be determined in applying the vessel repair statute to a factual situation is, of course, whether a repair has taken place within the meaning of 19 U.S.C. 1466(a). Courts have ruled extensively on the "repair" cost issue and the result is a continually narrowing field of dutiable repair. One early case (*United States v. George Hall Coal Co.*, 134 F. 1003 (1905)), was the first to find any of various types of expenses associated with repairs to be classifiable as not subject to the assessment of vessel repair duties. The case established that the expense of drydocking a vessel (regardless of the underlying need to drydock) is not an element of dutiable value in foreign repair costs. Drydocking is a major, but not isolated, expense in general ship repair operations. Many other associated expenses and services are necessary adjuncts to drydocking and are logically inseparable from the drydocking rule. These include such items as drydock block arrangement, sea water supply (for firefighting equipment), hose hook-up and disconnec-

tion charges, fire watch services, the services of a crane for drydocking-related operations, the provision of compressed air, cleaning of the drydock following repairs, among numerous others. These necessary services are costly, are supplied at nearly each drydocking, and had until recently been considered to be classifiable as duty-free.

On December 29, 1994, the United States Court of Appeals for the Federal Circuit decided the case of *Texaco Marine Services, Inc., and Texaco Refining and Marketing, Inc. v. United States*, 44 F.3d 1539. While this case was submitted on appeal regarding the dutiability of specific foreign shipyard operations, the Court went much further by considering the propriety of several long-standing court cases, including the opinion in *George Hall, supra*. In so doing, a whole range of charges are subjected to duty consideration which had been insulated from such treatment since 1905.

The recent upheaval in terms of both statutory amendment and judicial interpretation has resulted in the need to update the regulatory provisions which implement the vessel repair statute. This has led to the proposed revisions contained within this document, which are presented in a more streamlined and simpler format, all in conformance with the recent changes. Most significantly in this connection, the proposed amendments eliminate the Petition for Review process, currently the second of two pre-protest appeals for relief from duty, and vest in the Vessel Repair Units full authority to process and decide Applications for Relief without restrictions as to the amount of potential duty refund or remission.

Additionally, it is proposed that the Customs Regulations in part 159 be amended to recognize that vessel repair entries are not considered to be subject to liquidation, and that any duties paid pursuant to a vessel repair entry will henceforth be considered to be charges or exactions within the meaning of subsection (a)(3) of § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), the statute under which decisions of the Customs Service are protested. As such, duty determinations on vessel repair entries will be protestable but will not be subject to voluntary reliquidation or deemed liquidation procedures. This distinction will serve to recognize elements which are unique to the vessel repair entry process such as potential protracted delays in supplying cost information due to difficulty in obtaining proof of foreign expenses from shipyards in a timely fashion.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments which are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed amendments would revise the Customs Regulations concerning the declaration, entry, assessment of duty and processing of petitions for relief from duty, for subject vessels under the vessel repair statute. The proposed amendments are intended to accurately reflect the existing statutory authority, as well as legal and policy determinations made in this regard as the result of judicial decisions and administrative enforcement experience. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does this document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice of proposed rulemaking has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0082. This rule does not propose any substantive changes to the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN TITLE 19 CFR

19 CFR Part 4

Customs duties and inspection, Declarations, Entry, Repairs, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 159

Customs duties and inspection, Entry procedures.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend parts 4 and 159, Customs Regulations (19 CFR parts 4 and 159), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citation for § 4.14, would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * * * *

2. It is proposed to revise § 4.14 to read as follows:

§ 4.14 Equipment purchases by, and repairs to, American vessels.

(a) *General provisions and applicability.* Under § 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States, including repairs made while those vessels are on the high seas, are subject to declaration, entry and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which, although not documented under U.S. law, exhibit an intent to engage in those trades under Customs interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles which have been imported into the United States and are later sent abroad for use. For the purposes of this section, expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are considered to have been made in the United States, and are not subject to declaration, entry or duty. Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are no longer subject to any vessel repair duties. Even in the absence of any liability for duty, it is still required that all repairs and purchases, including those made in Canada, Mexico, and Israel, be declared and entered.

(b) *Applicability to specific types of vessels.*

(1) *Fishing vessels.* As provided in § 4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties and must file a declaration and entry, or their electronic equivalent, for covered foreign expenditures upon their first post-expenditure arrival in the United States. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S., must also file and pay duty.

(2) *Government-owned or chartered vessels.* Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) *Vessels away continuously for two years or longer.* Vessels normally subject to the vessel repair statute, which remain continuously outside the U.S. for two years or longer, are liable for duty on any fish nets and netting purchased at any time during the entire absence. Other than for nets and netting, such vessels are liable for duty only on those expenditures which are made during the first six months of a continuous absence of two years or more from the United States. The single exception

to this rule applies to vessels designed and used primarily for transporting passengers and merchandise which specifically depart the United States in order to obtain repairs or to purchase equipment. These vessels remain fully liable for duty regardless of the duration of their absence from the United States. Even though some costs may not be dutiable, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or file a bond on Customs Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A bond of sufficient value to cover all potential duty on the foreign repairs and purchases which must be submitted at the port of arrival shall be forwarded by Customs at that port to the appropriate VRU port of entry, as defined in paragraph (g) of this section. The amount of the bond is within the discretion of Customs at the port of arrival since claims for reduction in duty liability are subject to the consideration of evidence by Customs. Customs officials at the port of arrival may consult the appropriate VRU port of entry or the staff of the Entry Procedures and Carriers Branch in Customs Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby the agency remains liable under the contract for payment of the duty, there must be a deposit or a bond filed in an amount adequate to cover the estimated duty.

(d) *Declaration required.* When a vessel subject to this section first arrives in the United States following a foreign voyage, the owner, master, or authorized agent must submit a vessel repair declaration on Customs Form 226, a dual-use form used both for declaration and entry purposes, or must transmit its electronic equivalent. The declaration must be ready for presentation in the event that a Customs officer boards the vessel. If no foreign repair-related expenses were incurred, that fact must be reported either on the declaration form or by approved electronic means. The Customs port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent shall immediately forward it to the appropriate VRU port of entry.

(e) *Entry required.* The owner, master, or authorized representative of the owner of any vessel subject to this section for which a positive declaration has been filed must submit a vessel repair entry on Customs Form 226 or transmit its electronic equivalent. The entry must show all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor. The entry submission must indicate whether it provides a complete or incomplete account of covered expenditures. The entry must be presented or electronically transmitted by the vessel operator to the appropriate VRU port of entry as identified in para-

graph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Duty refund or remission claims should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(f) *Time limit for submitting evidence of cost.* A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the appropriate VRU port of entry within 90 calendar days from the date of vessel arrival. That evidence must include either the final cost of repairs or, if the operator submits acceptable evidence that final cost information is not yet available, initial or interim cost estimates given prior to or after the work was authorized by the operator. The proper VRU port of entry may grant one 30-day extension of time to submit final cost evidence if a satisfactory written explanation of the need for an extension is received before the expiration of the original 90-day submission period. All extensions will be issued in writing. Inadequate, vague, or open-ended requests will not be granted. Questions as to whether an extension should be granted may be referred to the Entry Procedures and Carriers Branch in Customs Headquarters by the VRU ports of entry. Any request for an extension beyond a 30-day grant issued by a VRU must be submitted through that unit to the Entry Procedures and Carriers Branch, Customs Headquarters. In the event that all cost evidence is not furnished within the specified time limit, or is of doubtful authenticity, the VRU may refer the matter to the Customs Office of Investigations to begin procedures to obtain the needed evidence. That office may also investigate the reason for a failure to file or for an untimely submission. Unexplained or unjustified delays in providing Customs with sufficient information to properly determine duty may result in penalty action as specified in paragraph (j) of this section.

(g) *Location and jurisdiction of vessel repair unit ports of entry.* Vessel Repair Units (VRUs) are considered to be the ports of entry for vessel repair declarations and entries, and are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes vessel repair entries received from ports of arrival on the Great Lakes and the Atlantic Coast of the United States, north of, but not including, Norfolk, Virginia. The New Orleans unit processes vessel repair entries received from ports of arrival on the Atlantic Coast from Norfolk, Virginia, southward, and from all United States ports of arrival on the Gulf of Mexico including ports in Puerto Rico. The San Francisco unit processes vessel repair entries received from all ports of entry on the Pacific Coast including those in Alaska and Hawaii.

(h) *Justifications for refund or remission of duty.* Vessel repair duties may be refunded or remitted. Refunds relate to claims made under paragraph (a) of the vessel repair statute (19 U.S.C. 1466(a)), and remis-

sions relate to claims made under paragraphs (d), (e) and (h) of the vessel repair statute (19 U.S.C. 1466(d), (e) and (h)).

(1) *Refund of duty.* Duty is refunded when it is determined that a foreign shipyard operation or expenditure is not considered to be a repair or purchase within the terms of the vessel repair statute, or as determined under judicial or administrative interpretations.

(2) *Remission of duty.* Duty is remitted under paragraph (d) of the vessel repair statute (19 U.S.C. 1466(d)) when it is determined that a foreign shipyard operation or expenditure involves any of the following:

(i) *Stress of weather or other casualty.* Duty will be remitted if good and sufficient evidence supports a finding that the vessel, while in the regular course of its voyage, was forced by stress of weather or other casualty, while outside the United States, to purchase equipment or make repairs necessary to secure the safety and seaworthiness of the vessel in order to enable it to reach its port of destination in the United States. Only duty on the cost of the minimal repairs needed for safety and seaworthiness is subject to remission. For the purposes of this section, a "casualty" does not include any purchase or repair made necessary by ordinary wear and tear, but does include the failure of a part to function if it is proven that the specific part was repaired, serviced, or replaced in the United States immediately before the start of the voyage in question, and then failed within six months of that date.

(ii) *U.S. parts installed by regular crew or residents.* Duty will be remitted if equipment, parts of equipment, repair parts, or materials used on a vessel were manufactured or produced domestically and were purchased in the United States by the owner of the vessel. It is also required under the statute that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installation.

(iii) *Dunnage.* Duty will be remitted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(i) *General procedures for seeking refund or remission.*

(1) *Applications for Relief.* Vessel repair duty will not be refunded or remitted unless an Application for Relief is filed with Customs; duty will not be refunded or remitted based merely on a duty refund or remission claim made at time of entry pursuant to paragraph (e) of this section. An Application for Relief is not required to be presented in any particular format, but if filed it must clearly present justification for granting relief. An Application must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in this section. The deadline for receipt of an Application and supporting evidence is 90 days from the date that the vessel first arrived in the United

States following foreign operations. Applications must be addressed and submitted by the vessel operator to the appropriate VRU port of entry and will be decided in that unit. The VRUs may seek the advice of the Entry Procedures and Carriers Branch in Customs Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the minimal standards of an Application for Relief is received, the duty amount will be determined without regard to issues of refund or remission. Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e) of this section. The cost of items for which refund or remission is being sought must be segregated from the cost of the other items listed in the vessel repair entry;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were the minimum necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any other United States Government Agency regarding the operation of the vessel.

(2) *Additional evidence.* In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by a VRU, the Applicant will be notified of the right to protest any perceived excessive charge or exaction.

(3) *Administrative Protest.* Following the determination of duty owing on a vessel repair entry, a protest may be filed as the only and final administrative appeal. The procedures and time limits applicable to protests filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter.

(j) *Penalties.* (1) *Failure to report, enter, or pay duty.* It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry,

and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and is recoverable from the owner (see § 162.72 of this chapter).

(2) *False declaration.* If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person shall be subject to the criminal penalties provided for in 18 U.S.C. 1001.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151.

Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;
Section 159.6 also issued under 19 U.S.C. 1321, 1505;
Section 159.7 also issued under 19 U.S.C. 1557;
Section 159.22 also issued under 19 U.S.C. 1507;
Section 159.44 also issued under 15 u.S.C. 73, 74;
Section 159.46 also issued under 19 U.S.C. 1304;
Section 159.55 also issued under 19 U.S.C. 1558;
Section 159.57 also issued under 19 U.S.C. 1516.

2. It is proposed to amend § 159.11(b) by removing the phrase, "vessel repair entries or".

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: March 12, 1999.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

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